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DeBord, Chelsea

From: Havens, Arnie
Sent: Monday, May 11, 2009 4:46 PM
To: John.Harrington@do.treas.gov
Cc: Michael.Mundaca@do.treas.gov; Nancy.Lee@do.treas.gov
Subject: Dr. Tromp's letter re your double taxation question

Follow Up Flag: Follow up
Flag Status: Red

Attachments: letter John Harrington0001.PDF

John,

Below is a letter from Dr. Tromp, President of the Central Bank of the Netherlands Antilles, in response to the question you posed during his visit with you on March 18th concerning the incidents of double taxation set forth in the letter from Finance Minister de Lannooy to Secretary Geithner.

Should you or your colleagues have any further questions or need additional information please let me know.

Best regards,
Arnie

letter John
Harrington0001.PD..

Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP, provides representation to the Bank van de Nederlandse Antillen. Additional information is available at the Department of Justice in Washington, DC.

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May 6, 2009

Mr. John Harrington
International Tax Counsel
Office of Tax Policy
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Room 3054
Washington, DC 20220

Your ref.: -
Our ref.: ET/als/2009-15.000

Dear Mr. Harrington,

During my visit with you on March 18, 2009 to discuss the strong desire of the Netherlands Antilles to commence negotiations of a double taxation treaty with the United States, I shared a copy of a letter to Secretary Geithner from Finance Minister de Lannooy dated March 17, 2009 on this critically important issue.

The letter sets forth a number of incidents of double taxation which exist due to the lack of an income tax treaty between the United States and the Netherlands Antilles. During our meeting, you questioned whether in examples I (N.A. NV Engaging in U.S. Trade or Business) and II (N.A. NV Receives Dividends from U.S. Corp) other deductions available to N.A. NV's would eliminate the 5% incidence of double taxation on the income or dividends received by the N.A. NV.

As promised, we have researched your question and have found no evidence in the legislative history that would suggest that the 95% exemption rather than a 100% exemption is in effect due to other available deductions. What the research did establish is that in the Dutch system, which forms the basis of Netherlands Antilles law, there was a requirement that foreign subsidiaries should be subject to profits tax in the country of residence to enable the parent company to claim the exemption. Under Netherlands Antilles law, the exemption applies whether or not the foreign subsidiary is subject to a profits tax in its country of residence. In light of the absence of this requirement, the legislators adopted the view that for non-Dutch foreign subsidiaries a 95% exemption would apply and not a 100% exemption. This distinction is also applied with respect to foreign permanent establishments.

We hope this clarification is helpful and we look forward to working with you and your colleagues at Treasury to begin negotiations that will result in a double taxation treaty between the United States and the Netherlands Antilles.

Sincerely,
Bank van de Nederlandse Antillen

Dr. E.D. Tromp
President

CC: Mr. Michael Mundaca, Acting Assistant Secretary for Tax Policy
Ms. Nancy Lee, Deputy Assistant Secretary, Western Hemisphere